

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FRED W. HOLLAND, M.D.,

CIVIL DIVISION

Plaintiff,

No. 3:18-cv-00490

v.

HONORABLE JAMES G. CARR

MERCY HEALTH, et al.,

Defendant.

JURY TRIAL DEMANDED

**PLAINTIFF'S MOTION TO STAY ENFORCEMENT OF THE AWARD OF
COSTS PENDING APPEAL**

AND NOW, comes Plaintiff, Fred W. Holland, by and through his counsel, and files the following Motion to Stay Enforcement of the Award of Costs Pending Appeal and in support thereof, Plaintiff avers as follows:

1. On September 23, 2021, this Court granted Defendants' motion for summary judgment in its entirety. [Doc. # 132].
2. On October 25, 2021, Plaintiff filed a timely notice of appeal. [Doc. # 134].
3. On October 23, 2021, pursuant to Fed. R. Civ. P. 54, Defendants filed their Bill of Costs in the amount of \$46,803.49¹ [Doc. # 135], which were taxed by the clerk as part of the final judgment on November 11, 2021 [Doc. # 136].

¹ Defendants agreed to reduce the total amount of costs by \$1,040.00 which related to costs for expediting certain deposition transcripts. See email chain, attached hereto as Exhibit 1. However, on January 6, 2022, Defendants advised they are seeking to collect the full amount. See email, attached hereto as Exhibit 2.

4. On or about November 17, 2021, through the Sixth Circuit's mediation program, the Sixth Circuit granted the parties request to extend the briefing deadlines, making Plaintiff's opening appellate brief due on or about January 19, 2022.

5. On or about January 6, 2022, Defendants requested that the judgment for costs be paid while the matter was on appeal, and that nothing prevented them from executing while the appeal was pending.

6. Accordingly, pursuant to Fed. R. App. 8(a), Plaintiff files this instant motion before this Court requesting a stay of enforcement of the award for any and all costs while his appeal is pending.

7. Other courts within the Sixth Circuit have granted similar motions. See e.g., Kirk v. Shaw Env'tl., No. 1:09-cv-1405, 2010 U.S. Dist. LEXIS 159950, 2010 WL 11681755 (N.D. Ohio 2010) citing MacDonald v. United Parcel Serv., 2010 WL 1254607, at *3 (E.D. Mich. 2010); Brown v. American Enka Corp., 452 F. Supp. 154, 160 (E.D. Tenn. 1976).

8. In Shaw, the district court noted found that financial disparity of the parties is a reasonable basis to stay the enforcement of an award of costs. Shaw, 2010 U.S. Dist. LEXIS 159950 at *13.

9. Here, Defendant Mercy Health has 23 hospitals and hundreds of clinics, urgent care, and medical center locations across Ohio and Kentucky. <https://www.mercy.com/locations>. By comparison, Plaintiff is just an individual.

10. The disparate financial impact between the Parties should be obvious.

11. Furthermore, it would be against the interests of judicial economy to permit Defendants to collect their costs now because if Plaintiff is successful on appeal,

he would then have to file another motion before this Court to have that award vacated and/or reversed (and have the money paid back to him, etc.) since Defendants would no longer be “the prevailing party” for purposes of obtaining their costs. Such a practice should be unnecessary and can be avoided with a stay pending the outcome of the ongoing appeal, which is being timely pursued, with imminent deadlines.

WHEREFORE, Plaintiff, Fred W. Holland, respectfully requests that the Court grant his instant motion requesting a stay of the enforcement of the award of costs pending the outcome of his appeal which is pending before the Sixth Circuit.

Respectfully submitted,

Date: January 10, 2022

By /s/ Jason A. Archinaco
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CERTIFICATE OF SERVICE

I, Jason A. Archinaco, hereby certify that I have served a true and correct copy of the foregoing **PLAINTIFF'S MOTION TO STAY ENFORCEMENT OF THE AWARD OF COSTS PENDING APPEAL** to and upon the following, via the CM/ECF Filing System as well as email and United States First Class Mail on this 10th day of January 2022.

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